STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

April 7, 2008

REGISTERED MAIL
RB 252 945 531 US

U.S. Army Corps of Engineers
Portland District
ATTN: Marci Cook
CENWP-PM-E
P.O. Box 2946
Portland, Oregon 97208-2946

RE: Water Quality Certification Order No. **5397,** Corps Project No. CENWP-PM-E-07-03; for the Julia Butler Hansen (JBH) Columbian White-tailed Deer National Wildlife Refuge (NWR) Section 536 Habitat Restoration Project; Lower Columbia River Estuary, Wahkiakum County, Washington.

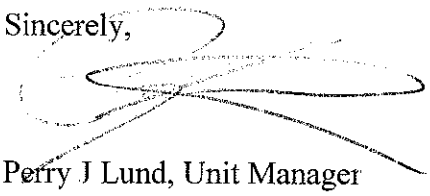
Dear Ms. Cook:

On August13, 2007, the Portland District Army Corps of Engineers submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed JBH Refuge Restoration project. The project proposes to restore tidal flow and fisheries access to 87 acres of slough habitat, and restore 210 acres of native riparian forest on the Julia Butler Hansen Columbian White-tailed Deer National Wildlife Refuge in Wahkiakum County, Washington. The Department of Ecology issued a Public Notice for the proposed project on November 16, 2007.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Perry J Lund, Unit Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office

LO:dn
Enclosure

cc: Danette Guy, Corps of Engineers
Charles Beyer, Wahkiakum County
Steve West, WDFW
(Attached List)

e-cc: Penny Keys, Ecology HQ
Loree' Randall, Ecology HQ
Mark Cline, Ecology SWRO SEA
Deb Cornett, Ecology SWRO WQ
Kevin Farrell, Ecology SWRO SEA
Lori Ochoa, Ecology SWRO SEA

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RESIDENT
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CATHLAMET CHIP CORPORATION
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WA DEPARTMENT OF NATURAL RESOURCES
AQUATIC RESOURCES DIVISION
MS: 47027
OLYMPIA WA 98504-7027

WA DEPARTMENT OF NATURAL RESOURCES
ASSET MANAGEMENT & PROTECTION
MS: 47014
OLYMPIA WA 98504-7014

WA DEPARTMENT OF NATURAL RESOURCES
LAND MANAGEMENT
MS: 47016
OLYMPIA WA 98504-7016

WA DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER OF PUBLIC LANDS
MS: 47001
OLYMPIA WA 98504-7001

US ARMY CORPS OF ENGINEERS
PORTLAND DISTRICT
ATTN MARCI COOK
CENWP-PM-E
PO BOX 2946
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US FISH AND WILDLIFE SERVICE
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27 CHINOOK VALLEY RD
CHINOOK WA 98614-0225

WA DEPARTMENT OF NATURAL RESOURCES
RESOURCE PROTECTION
MS: 47037
OLYMPIA WA 98504-7037

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO The Portland District, U.S. Army Corps of Engineers in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	))))))))	**ORDER # 5397** Julia Butler Hansen (JBH) Columbian White-tailed Deer National Wildlife Refuge Section 536 Habitat Restoration Project, Wahkiakum County, Washington.

TO: The Portland District, U.S. Army Corps of Engineers
ATTN: Ms. Marci Cook
CENWP-PM-E
P.O. Box 2946
Portland, Oregon 97208-2946

On August 13, 2007, the Portland District of the U.S. Army Corps of Engineers submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on November 16, 2007.

The proposed project will take place within the Julia Butler Hansen National Wildlife Refuge within the Columbia River estuary at Steamboat Slough Road, two miles west of Cathlamet and Brooks Slough Road, approximately one mile east of Skamokawa, Wahkiakum County, Washington 98612; Sections 16, 21, 22, 26, and 27, Township 9 North, Range 6 West; WRIA 25, Grays-Elochoman Watershed.

This project is intended to restore tidal flow and fisheries access to 87 acres of slough habitat, and restore 210 acres of native riparian forest habitat on the JBH NWR. The project will involve work within the following waterbodies: Brooks Slough, Ellison Slough, Indian Jack Slough, Steamboat Slough, Duck Lake Slough, Winter Slough, Hampson Slough, Risk Creek, Elochoman River, and the Columbia River. Project construction will include the installation, replacement and/or modification of culverts and tidegates through flood control levees at the sloughs within the JBH NWR. Associated features include interior log booms, exterior pilings to protect the tidegates from floating woody debris, riprap at culverts for erosion protection, and interior and exterior channel construction where necessary. Construction will also include the restoration of a sinuous channel for a portion of Risk Creek that travels through the refuge.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 303, 306, and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and,

3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean the Portland District of the U.S. Army Corps of Engineers, and its agents, assignees and contractors.

2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office Attn: Federal Permit Coordinator, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall reference Order No. **5397**.

3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on August 13, 2007. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.

5. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.

7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.

8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.

9. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.

10. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars ($10,000.00) per violation for each day of continuing noncompliance.

B. Water Quality Conditions:

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC), or sediment quality standards (Chapter 173-204 WAC) except as modified by this order. Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments occurring as a result of project construction or operations.

Short Term Water Quality Modification:

1. The project may result in the temporary exceedance of certain state water quality criteria or special conditions specified in Chapter 173-201A WAC.
2. Consistent with WAC 173-201A-410, this Order authorizes a short term modification to the turbidity standards by granting a temporary mixing zone.
    a. The distance granted for the temporary turbidity mixing zone is 1200 feet downstream from the point of in-water work.
    b. The short term modification is granted for a total of six (6) weeks.

Water Quality Monitoring & Reporting:

3. Turbidity shall be assessed and recorded at a minimum of every four (4) hours during daylight hours when in-water activities are being conducted. Monitoring points shall be 100 feet upstream (representative background), 600 feet downcurrent, and 1200 feet downcurrent from the point of in-water activities. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable.

    a. For this project, the following is considered to be an exceedance of the standard:

        - Project-related turbidity visible at 1200 feet from the in-water activity; OR,

        - 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a ten (10) percent increase in turbidity when the background turbidity is more than 50 NTU, at the point of compliance when a turbidimeter is used.

4. If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, correct the problem and/or prevent further water quality turbidity exceedances. If an exceedance occurs, the Applicant shall follow the protocols and notification procedures below:

    a. Notification of Exceedances: Notification of exceedances that are detected through water quality monitoring shall be made to Ecology within 24 hours of occurrence. Notification shall be made per Condition A2 above. The Applicant shall, at a minimum, provide Ecology with the following information:

        - A description of the nature and cause of non-compliance, including the quantity and quality of any unauthorized discharges;

        - The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance; and,

        - The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.

        - In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, photographs, and any other pertinent information.

5. Mitigation and/or additional monitoring may be required if water quality standards are not met.

6. A monitoring report shall be submitted by December 31, 2008, to include, at a minimum, the following:

- Name(s) and phone number(s) of persons(s) responsible for monitoring;
- dates and times of in-water construction activities;
- monitoring results; samples times, locations, and measured/observed turbidities;
- summary of in-water construction activities and measured/observed turbidities associated with those activities; and,
- summary of corrective actions take to reduce sediment and turbidity.

C. Timing Requirements:

1. This Order is valid until all compliance requirements in this document have been met.

D. Notification Requirements:

1. The Applicant shall provide written notification (FAX, e-mail, or mail) to Ecology's Southwest Regional Office Federal Project Coordinator in accordance with condition A.2 above for the following activities:

   a. At least ten (10) days prior to the pre-construction meeting.
   b. At least ten (10) days prior to the onset of any work on site.
   c. At least ten (10) days prior to the onset of in-water work, including wetlands.
   d. Immediately following a violation of the state water quality standards or any condition of this Order.
   e. Within fourteen (14) days after completion of construction.

NOTE: These notifications shall include the Applicant's name, project name, project location, the number of this Order, contact, and contact's phone number.

E. Construction Conditions:

General Construction Conditions:

1. Erosion and sediment control devices (filter or silt fences, etc.) and other BMP's intended to trap sediment on-site shall be in place before starting project construction and shall be maintained throughout construction until the site is stabilized.

2. All work in and near the water shall be done so as to minimize turbidity, erosion, and other water quality impacts.

3. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.

4. All debris or deleterious material resulting from construction shall be properly contained and disposed of at an approved upland location so that it cannot enter waters of the state.

5. All work within the project limits shall be clearly marked/staked prior to construction. Clearing limits, travel corridors, and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. All project staff shall be trained to recognize construction fencing or flagging that identifies sensitive area boundaries. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.

6. All equipment used below the ordinary high water line shall utilize bio-degradable hydraulic fluid.

7. Appropriate Best Management Practices (BMP's) shall be implemented to minimize track-out during construction

8. All excess excavated material shall be disposed of above the 100-year floodplain and shall be contained so as to prevent its re-entry into waters of the state.

9. Turbid water generated from construction activities, including turbid dewatering water, shall not be discharged directly into waters of the state. Clean dewatering water that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state.

10. Turbid water shall be routed to an upland location to allow removal of fine sediment and other contaminants. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in state waters, banks, or vegetation.

11. Concrete process water shall not enter surface waters of the state. Uncured concrete and concrete by-products shall be completely sealed off and totally contained using sealed forms or other leak-proof containment systems, and not allowed to contaminate or enter surface waters.

12. The Applicant shall have a boat available and on site during in-water activities to retrieve any debris entering the water.

Equipment Staging and Maintenance:

13. Staging area will be located a minimum of 50 feet and, where practical, 200 feet from waters of the state, including wetlands.

14. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in a confined area in order to prevent containment to waters of the state. Fueling areas will be provided with adequate spill containment. Fueling equipment and vehicles within 100 feet of state waters and wetlands is not allowed unless otherwise authorized by Ecology.

15. The Applicant shall establish a separate contained area for washing down vehicles and equipment, which does not have any possibility of draining to surface waters and wetlands. No wash water containing sediments, oils, grease, or other hazardous materials

resulting from wash down of the work area, tools, and equipment including concrete delivery trucks or other equipment used for concrete work shall not be discharged into state waters or storm drains.

16. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc. shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into waters of the state.

Outlet Channel Construction, Tidegate Installation and Replacement, and Culvert Installation and Replacement:

17. All new channel construction and culvert work shall be conducted in the dry or in isolation from stream flow by installing a bypass flume or culvert or by pumping the stream flow around the work area. The stream diversion system shall be designed and operated so as not to cause erosion in the stream channel or on the banks of the waterbody in which the work is being conducted.

18. All channel stabilization work and materials shall be in place prior to introducing the stream flow into the new channel.

19. Any spoils from channel construction shall be placed in an approved upland location.

20. Re-introduction of water into the new channel shall be done gradually and at a rate not higher than the normal stream flow in order to minimize the mobilization of sediments and fines into downstream waters.

21. Culverts shall be installed and maintained to avoid inlet scouring and to prevent erosion of stream banks downstream of the project site.

Pile Driving and Removal:

22. All new pilings shall be made of steel or concrete.

23. Pilings shall be installed using a vibratory hammer and/or a hydraulic excavator boom. If proofing the steel piling requires the use of an impact pile driver, a dampening device such as a block of wood at least six-inches thick shall be placed between the piling and the impact pile driver to attenuate the noise.

24. Piles removed from the substrate shall be moved immediately from the water onto uplands or into a barge. The pile shall not be shaken, hosed off, left hanging to drip, or any other action intended to clean or remove adhering material from the pile.

F. Restoration Monitoring and Reporting:

1. Pre- and post-construction monitoring will measure the response of juvenile salmonids to tidal slough fish passage and habitat improvements on JBH NWR.

2. Pre-construction studies will assess species composition, presence, and use by anadromous fish of JBH NWR sloughs and determine if address if adult salmonids are ascending Risk Creek. Juvenile salmon are known to make substantial use of natural tidal slough habitats

in the vicinity of JBH NWR which serve as reference sites for the pre-construction monitoring effort.

3. Post-construction monitoring will measure the response of juvenile salmonids to tidal slough fish passage and habitat improvements. The monitoring will provide needed information regarding ingress/egress and habitat use of tidal sloughs equipped with self-restrained, side-hinged tide gates by juvenile salmonids in the lower Columbia River and estuary.

4. Objectives of the post-construction monitoring include:

   a. Determine whether adult anadromous salmonids are present in the upper reaches of tributaries before and after modifications are made to tide gates or other restoration activities associated with the lower reaches of tributaries.

   b. Assess the periods, frequency, and duration that tide gates (as presently configured, after modifications, and newly installed) are likely conducive to passage by juvenile and adult salmonids, specifically during October to June

   c. Describe presence, distribution, and biological characteristics (e.g., species, size) of fish inhabiting mainland sloughs at JBH NWR and compare to that observed at reference sloughs.

   d. Characterize habitats at mainland sloughs at Julia Butler Hansen NWR and compare to that observed at reference sloughs.

5. Monitoring reports shall be submitted to Ecology for three years following the completion of construction. The Monitoring Reports shall be submitted to Ecology's Southwest Regional Office Federal Project Coordinator in accordance with condition A.2. above.

G. Emergency/Contingency Measures:

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
   a. Cease operations that are causing the compliance problem.
   b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.

c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.

d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.

e. Immediately notify Ecology's Southwest Regional Spill Response Office at (360) 407-6300, and the Washington State Department of Fish and Wildlife of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.

3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.

4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's Southwest Regional Spill Response Office at 360 407-6300.

H. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
PO Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Lori Ochoa
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775

For additional information visit the Environmental Hearings Office Website: http://www.eho.wa.gov
To find laws and agency rules visit the Washington State Legislature Website:
http://www1.leg.wa.gov/CodeReviser

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

DATED this 8 day of APRIL, 2008, at Lacey, Washington.

Perry J. Lund, Unit Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington